

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of	)	EB Docket No. 02-21
)	
Peninsula Communications, Inc.)	
	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
)	
Licensee of FM translator stations)	
K285EF, Kenai, Alaska;	)	52161
K283AB, Kenai/Soldotna, Alaska;	)	52155
K257DB, Anchor Point, Alaska;	)	52162
K265CK, Kachemak City, Alaska;	)	52154
K272CN, Homer, Alaska; and	)	52148
K274AB and K285AA, Kodiak, Alaska	)	52151 and 52164

To: Chief Administrative Law Judge Richard L. Sippel

DIRECT HEARING TESTIMONY OF PENINSULA COMMUNICATIONS, INC.

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ORIGINAL

**DIRECT TESTIMONY OF
DAVID F. BECKER
PRESIDENT
PENINSULA COMMUNICATIONS, INC.**

The case at hand has no doubt raised questions about an Alaskan Broadcaster that would "disobey a Commission Order" and consequently place all his FCC broadcast station licenses in jeopardy. The short answer to this is that our case is about "due process" (or the denial of it) and that the FCC is plainly wrong on the key issues involved. It has become ever so clear that the only way Peninsula Communications Inc. (PCI) will get a fair resolution of the issues is to get a hearing before an FCC Administrative Law Judge and have the issues decided by the D.C. Circuit Court of Appeals. PCI is determined to get our case "heard" and is confident that PCI will prevail based on the merits, for all the reasons discussed in our arguments presented in our Initial Brief to the D.C. Circuit Court, August 27, 2002. It is the corpus of this D.C. Circuit appeal, PCI's FM translator licenses, that PCI has been forced to defend by not permitting the licenses to "automatically expire" after 12 months of silence. The stark reality is that had PCI obediently turned off the seven FM translators sixteen months ago when ordered to do so by the Commission...our appeal would have been over four months ago. This would not be "due process" as envisioned and guaranteed by the Fifth Amendment to our Constitution.

It is PCI's belief that it was never the intent of Congress to place a licensee in a position of having to choose whether to obey an FCC order to terminate operation or to forfeit the right of appeal. As a result, PCI has begun an effort to work with the Alaska Congressional delegation, in particular Senator Ted Stevens, to amend the Communications Act to add language to Section 307(c)(3) specifically prohibiting the FCC from terminating a licensee's right to continue to operate with "licenses which *continue in effect*" pending the outcome and "finality" of judicial review.

Although this section as currently written authorizes continued operation while awaiting a hearing or rehearing or a timely filed appeal with the D.C. Circuit Court, (pursuant to Section 405 and 402) **it does not specifically prohibit the FCC from ordering a broadcaster off the air while an appeal is being prosecuted, although it has always been the Commission's policy and practice to allow a broadcaster to continue operation pending an appeal in order to ensure the continuity of service provided to the public.** Had such language barring the FCC from such action been in the statute, the PCI OSC for license revocations would not be an issue today. It is my hope to accomplish this change, if for no other reason than to save any other hapless broadcaster from the perils of any similar circumstances in the future.

The proposed amendment is as follows (language added indicated in bold) :

Section 307:

(c) Terms of Licenses.—

- (3) CONTINUATION PENDING DECISION.—Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect. **The Commission may not terminate the licensee's right to continue to operate with licenses which continue in effect if a timely appeal has been filed pursuant to section 402, pending the completion of judicial review and the finality of an order affirming or denying the Commission's decision.**

PCI will be working to get this amendment passed in the next session of Congress.

I would like to offer a brief narrative of PCI's broadcast history in Alaska and my personal background and education. Additionally, I would like to explain the reasons for building these translators in Alaska and why PCI has taken the action it has to defend its licenses and property from the unlawful actions of the FCC. This is offered as means to more fully understand the reasons why PCI feels justified in taking its present course of action.

Personal Background and Education:

My wife (Eileen Becker) and I (David Becker) formed Peninsula Communications Inc. in August of 1978. We moved to Alaska in March of 1973, nearly 30 years ago from Santa Barbara, California. When we arrived on the Kenai Peninsula, we found there was only one AM radio station on the entire Kenai Peninsula, (KSRM AM 920), located in Soldotna. The signal was essentially unlistenable in Homer, 75 miles away. There was one TV translator signal of an Anchorage TV station which was mostly noise and off the air more than it was on the air from Seldovia, across Kachemak Bay from Homer. The public interest need for more radio was obvious...but the key question was whether a commercial radio station could operate and survive financially in an area with such a small population and limited advertising revenue?

Biography of David F. Becker:

I was born on February 29, 1944 in Breckenridge, Minnesota. I am 58 years old. I have four sons, one adopted daughter and a foster son. I married Eileen Stimson, August 21, 1965 and we have been happily married 37 years. We have three grandchildren and are expecting the fourth early next year. All of our children, except for our 18 year old daughter, have earned college Bachelor Degrees and are productive members of their communities. My wife and I believe we have successfully raised our family to be law-abiding citizens and morally upright in their convictions. My wife and I profess a faith in the Lord Jesus Christ and are practicing Christians. We have been active in our church for nearly 30 years. I have served on the Board of Directors for Alaska Village Missions, which operates the Alaska Bible Institute, for the past 26 years. I have never been involved in any form of crime, drugs or immoral activities. In fact, I stand firmly against any such illegal or immoral activity. My reputation for such personal convictions has been well known in my community for the past 30 years. I have personally hosted a three-hour Christian music program on Sunday morning called "Songs of Praise" on the radio for the past 23 years. I do not believe in flaunting authority or breaking the law since I believe as a matter of faith that Christians should set an example of moral and ethical conduct. This is why I was deeply troubled by the FCC's unprecedented order terminating our operation when our federal court appeal was timely filed and pending. I certainly did not relish the position I was placed in by the FCC by denying two requests for a stay of its actions against the PCI translators while our appeals were pending before the court, and being forced to keep our translator stations on the air to protect the viability of PCI's appeal. I believe there was no other option under the existing circumstances than to take this necessary but unfortunate action. It was successful in that it extended our right to have our appeal decided by the United States Court of Appeals for the District of Columbia Circuit, whereas without continuing to operate the translators our appeal would never have been considered on its merits by the court and we would have been denied our due process rights under the Communications Act and the Administrative Procedure Act. The obvious negative points are that it precipitated the current OSC proceeding and FCC forfeiture of \$140,000, which I object to as unfair and in violation of the Constitutional protection against "double jeopardy", and which has caused a great deal of personal stress for my family and me.

I hold a Bachelor of Science Degree in Electronic Engineering from California State Polytechnic University "Cal Poly", San Luis Obispo, California graduating "Cum Laude" in 1967. I was the top student in my class graduating with a 3.7 gpa in my major. I earned a Master of Science Degree in Electrical Engineering from the University of California, Santa Barbara, California graduating in 1970. I was employed for six years by Raytheon Company, Electromagnetic Systems Division, Santa Barbara until 1973 when we made the move to Alaska. I held a "Top Secret" security clearance while at Raytheon and developed Electronic Counter Measure Systems that were successfully used in the Viet Nam War for the benefit of the United States military

In 1973, my wife and I bought a 24 room hotel and a restaurant and moved our young family to the "last frontier" at the end of the road, Homer, Alaska. We operated the historic Heady Hotel and Sterling Café for seven years, selling the business in 1980. This was the springboard for the launch of our "radio business" with KGTL FM, signing on the air in September of 1979 as the first local FM radio station in Homer, Alaska. We succeeded in losing over \$140,000 in our first four years of operation but continued to operate the station and serve the public interest over that period.

The 1980's "Wrangell Radio Group" Translator Era:

In August of 1979, one month before signing our first FM station on the air, our competition from Kenai – Soldotna, Alaska KSRM, Inc, put an FM translator station on the air in Homer on 100.9 Mhz, translating their FM station "KQOK" Kenai, into the Homer area. Also in August of 1979, KBBI AM 1240 , Homer, signed on the air one month before the start up of KGTL FM. Thus, PCI started our initial operation with competition from two, not one, new sources of competition within one month. Homer went from no radio to three stations within 2 months. PCI filed a petition with the FCC seeking the termination of the KQOK FM translator, noting that the translator would not have been permitted to operate within KGTL's primary contour if KGTL had been on the air first. Furthermore, PCI noted the "economic competition" that our new station faced from the KSRM translator K265AG and that PCI would no doubt be harmed by its continued operation, siphoning off advertising dollars that could otherwise be expected to go to KGTL FM. PCI's Petition for Termination was based on the then current version of the rules, Section 74.1232(h) which ... "permits the termination of a translator's operating authority , if circumstances since the grant have changed so that the authority would not have been originally granted". This precisely fit PCI's circumstances.

However, the FCC had a different take on the situation. In response, the Commission issued MO&O 81-484, attached as Exhibit A. The most pertinent part is paragraph 8:

" 8. We have examined the pleadings in this matter and conclude that petitioner has not demonstrated good cause for termination of the Homer translator station. Sections 74.1232(d) of the rules is permissive in nature and therefore, allows, but does not require, termination of a translator upon a proper showing that the competitive situation in a market is such that the translator is likely to spell the demise of a local full service FM station. The evidence before the Commission in this case amounts to little more than an allegation of potential harm. Peninsula has provided scant financial or economic data to support its assertion that station KGTL-FM cannot survive if it is required to continue competing with translator station K265AG. We note that KGTL-FM has been in operation for more than two years which would appear to be a sufficient time period within which to establish itself in the Homer market. The fact of the station's current status as an operating station is some evidence of its ability to survive. The Homer public is clearly benefited by the availability of two commercial services.

In view of the fact that the evidence before us does not demonstrate the eminent demise of KGTL-FM, we believe, on balance that the public interest is served by maintaining both commercial services in Homer”

The FCC Memorandum Opinion and Order, FCC 81-484, laid the foundation for all of the translators which PCI eventually licensed and built in south central Alaska. In addition to the “Wrangell Radio Group” waivers which were liberally granted for ownership restrictions, power output limitations, alternate signal delivery and grants for translators in “non-white” areas, the Commission gave the “green light” to build a translator virtually anywhere there was a community, whether it already had some form of service or not. The Commission determined that the public interest was served by maintaining two commercial services in Homer. Homer also had a non-commercial public AM radio station, KBBI, on the air. At the time, Kenai-Soldotna was served by only one commercial FM service, KQOK (FM). Therefore, PCI reasoned it would be in the public interest to add another commercial FM service to the Kenai-Soldotna area and filed for a CP to build a translator to serve the community via a translator for KGTL-FM. The Commission granted our application....no questions asked, and PCI put a translator on the air on 100.9 in 1983. This translator was eventually moved in frequency to 104.9, eventually moved to Kenai (K285EF) and a second translator added on 104.5 serving Kenai-Soldotna (K283AB).

Next PCI added another full service FM station KPEN-FM licensed to Soldotna in 1984. Under the Commission policy of liberally granting “Wrangell Radio Group” waivers, PCI sought and received permission to add three more translators to bring the signal of KPEN south to the Homer market in the mid-80’s. Three commercial FM services in Homer were obviously better than two....therefore, the Commission granted the applications with no questions asked. At the same time in 1983, there was no commercial FM service for the city of Kodiak, Alaska. However, Kodiak was served by a commercial AM station, KVOK and a non-commercial FM station, KMXT (FM). Not exactly a “white area” by Commissions standards. The Commission approved a translator for KGTL-FM licensed to Kodiak and owned by the Kodiak Community Church (KCC). PCI subsequently purchased the translator from KCC when it became evident that the church did not want to pay for the ongoing expenses of operating the translator and PCI desired to maintain the service to Kodiak. There was no ownership restriction at the time since this translator did not fall within the signal contour of any other commercial FM station serving Kodiak under the then current version 74.1232(d) of the rules. PCI was granted permission to purchase translator K285AA and to continue the rebroadcast of KGTL-FM even though PCI owned KGTL-FM. PCI sought and was granted permission to add a second translator for KPEN-FM serving Kodiak to provide a **second** commercial FM service. The Commission had, after all, determined that the public interest was, on balance, better served by two commercial FM services than one serving an Alaskan community (FCC 81-484)

Again, the mindset and policy of the Commission was to encourage the proliferation of broadcast signals in Alaska during the decade of the 80's. In each case in which PCI sought a Wrangell waiver to allow it to operate each of its FM translators in Alaska contrary to the ownership limitations in the FM translator rules, the waiver was approved by the FCC in issuing the licenses for the translators.

Next in the early 90's PCI noted that the community of Seward had no commercial FM service. Although Seward had a commercial FM channel allocated for many years (103.1) it remained unbuilt. Seward was served by a commercial station, KRXA AM 950, since the late 70's. KRXA had ample opportunity to apply for the vacant allocation over at least 10 years to build a sister FM station but never acted on it. PCI concluded that Seward would benefit from the addition of not one, but two commercial FM services via translator. The Commission agreed with PCI in a letter from Alan J. Schneider, Chief of the Auxiliary Services, dated 18 February, 1992, see Exhibit B. In pertinent part here is what the Commission told PCI:

"In support of your waiver request, you assert that the translator will provide a first commercial FM service to the Community of Seward which has a population of 3,921. You state that Seward is a "somewhat isolated area for radio due to the mountainous terrain." You propose to feed the translators via Alascom Aurora II C-Band satellite or via the State of Alaska microwave system because "off-the-air reception is impossible due to the terrain obstructions." You assert that these translators will "bring a much needed new service to the community."

On June 1, 1991, the revised FM translator rules became effective. See In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, ("Report and Order") 5 Rcd. 7212 (1990), as modified by Order, 6 FCC Rcd 2334 (1991). Section 74.1235 provides that translator operating power levels will be based on an effective radiated power (ERP) standard and not on the TPO standard previously used. The maximum ERP permitted pursuant to the new rules is 250 watts. We will grant you application with an authorized ERP of 250, the maximum permitted pursuant to the revised rules. Your request for waiver of the 10 watt power limitation is therefore moot.

You also request waiver to feed the proposed translator stations via satellite or microwave. Under 47 CFR Section 74.1231, only non-commercial educational translators operating on the reserved band (Channels 201-220) are authorized to receive input signals via satellite or microwave, except in limited circumstances not present here. In addition, you seek waiver of Section 74.1232(d), which provides that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station.

Thus, since you are the licensee of the proposed primary stations and the translator stations would be located outside the primary station service contour of those FM stations, you are not eligible under the rule for an authorization for an FM translator station.”

“The Commission has, however, on a number of occasions recognized the unique nature of the communications industry in Alaska and the distinct lack of adequate communications services in the state. In Wrangell Radio Group, 75 FCC 2d 404 (1979), the Commission noted that Alaska contains numerous small, isolated, and remote villages. Many of these remote native villages are more than 500 miles apart. As a result, broadcast signals are not readily available off-the-air in most Alaskan communities, such as Seward. After careful consideration of your requests, I am of the view that the Commission’s special concern for the availability of broadcast services in Alaska and the number of people who will receive full-service programming from the translator(s) justify your waiver requests. Therefore, we think a grant of your application will serve the public interest. Hence, we will grant your request for waiver of the rules, waive the appropriate rules and grant the applications.

Accordingly, for the reasons set forth above and pursuant to Section 0.283 of the Commission’s Rules, your request for waiver of the Commission’s Rules IS GRANTED and the requirements of Section 74.1231(b) and Section 74.1232(d) of the Commission’s Rules, to the extent set forth above, ARE WAIVED and the above –referenced applications are GRANTED.”

Therefore, PCI proceeded with the FCC’s full blessing to build the two Seward FM translator stations with ownership and technical characteristics that were in violation of the FCC’s rules and policies governing FM translator operation, but with the express approval of the FCC under the Wrangell waiver policy and with no indication that these waivers would one day be subject to revocation. There are several things to note about the Seward grants. The Wrangell Radio Group “waivers” were applied on a much broader basis than strictly “signal delivery”. Also note that Seward was not a “white area”. Seward had aural service from KRXA AM and was also served by another FM translator broadcasting KSKA (FM) public radio, Anchorage, on 88.1 via satellite. The Commission’s recent argument that Alaska commercial FM translators can only be granted (outside the primary station’s protected signal contour) on strictly a “white-area showing” is disproved by its action approving the Seward waivers for non-white areas and is therefore totally disingenuous. This is one basis for the PCI appeal before the D.C. circuit of the denial of PCI’s requested signal delivery waivers to restore service to Kodiak, when the United States Air Force destroyed PCI’s off-air receive antennas on Pillar Mountain in Kodiak in 1997.

The Commission unfortunately has acted arbitrarily in granting Wrangell waivers for Seward, but denying Wrangell waivers for Kodiak on the same exact basis and circumstances. PCI submits that the Commission can never justify its actions approving, on the one hand, Wrangell Radio Group waivers for Seward, and then, on the other hand, refusing to grant an identical request for another Alaskan community (Kodiak), citing a failure of PCI to meet a "white-area showing".

However, PCI was soon to be educated on the changing face of the FCC when it filed routine license renewals in 1995. The Commission policy of encouraging Alaskan broadcasters to invest in expanding service to "underserved" Alaskan communities was soon to be reversed by an FCC with "no institutional memory". Due to changes in staff and the loss of Commission personnel which had encouraged the development of new services to the communities of Alaska in the 1980's and early 90's...the Commission now became determined to destroy the services that PCI had built in good faith, assuming that the Commission could be "trusted" to stand behind the policies it enunciated in granting Wrangell Radio Group exceptions. PCI was singled out to come "into compliance" as a result of a competitor's "Petition to Deny" seeking the denial of PCI's routinely filed 1995 license renewals. While PCI has always maintained that it was specifically exempted from compliance under "footnote 59" of the revised FM translator rules, effective June 1, 1991, PCI voluntarily agreed to sell the nine disputed translators to an independent party, Coastal Broadcast Communications, Inc. It actually seemed like a "good idea" at the time. I was acquainted with Mr. David Buchanan, a former broadcast engineer at KCAM in Glennallen, Alaska. I had known David for about 20 years. Little did we both anticipate the major obstacles the FCC would put in the path to derail this sale. As has been previously discussed in my "State of Mind Statement", June 19, 2002, the Commission rendered four of the nine translators worthless by refusing to grant the requested Kodiak signal delivery waivers to restore service to Kodiak and then ordered the termination of the Seward signal delivery waivers without regard to Section 316, *unlawfully modifying our Seward translator licenses without notice or a hearing with an opportunity to protest*. This effectively "killed" the sale of PCI's FM translators to Coastal after fighting diligently for over three years to complete the sale on the basis of simply voluntarily agreeing to divest in 1996. PCI doubts at this point it could ever find a willing buyer again based on the incredible negative record of this proceeding over the last six years. Thus, this is another basis for PCI seeking relief from the D.C. Circuit Court of Appeals of the requirement to divest these stations.

The Commission has become "hardened" in this proceeding to fairly and objectively consider its actions in the PCI matter. The Commission has steadfastly refused to give PCI the required hearings along the way or to plainly state its reasons for dismissing the key issues raised in PCI's Petition for Reconsideration filed in response to the Commission's 1998 Order (MO&O I), filed January 11, 1999. The Commission also erred in summarily dismissing PCI's Section 1.110 Rejection of the February 2000 Order (MO&O II) as "untimely filed". PCI was entitled to an administrative hearing at this point on these issues.

PCI was faulted for not objecting three years earlier...but short of being clairvoyant, PCI had no advance knowledge the Commission would order the immediate termination of the Seward Wrangell Radio Group waivers in the February 2000 order. It was this new condition unlawfully modifying PCI's Seward licenses, in addition to other newly added conditions, that PCI correctly Rejected the February 2000 FCC Order pursuant to the provisions of section 1.110. This point, as has been previously noted, is on appeal with the D.C. Circuit Court

Finally, we come to the May 2001 FCC Termination Order (MO&O III). PCI had been waiting patiently for the Commission to designate the PCI translator matter for a hearing, pursuant to the timely filed section 1.110 Rejection. Instead, the Commission pulled out all the stops and blasted PCI with this Order. PCI timely filed an appeal with the D.C. Circuit Court of Appeals. It was apparent, the Commission intended to just "wash its hands of the PCI case". However, PCI had too much invested in this matter to simply let the FCC trample on PCI's right to "due process". The order to immediately cease operating by the next day was "amazing" in that it was an unprecedented action in the case of a license renewal applicant. As far as PCI's research has revealed, never in the regulatory history of the Commission since 1934, has a broadcast licensee been ordered to immediately cease operation with no provision for continuing authority pending judicial review. In fact, all the case precedent favors continued operation pending finality of a decision affirming or denying the Commission action by the reviewing court, even appeals taken all the way to the U.S. Supreme Court. (See, for example, the infamous case of Michael Rice, a principal in Contemporary Media, Inc. license revocations.) It has been the Commission's stated policy to always permit a "disqualified broadcaster to continue to operate pending the resolution of the broadcaster's qualifications to remain a licensee". So why was PCI denied the same accommodation? Frankly, we do not yet know. The Commission has refused to state its reasons. The FCC action is blatantly arbitrary and capricious and contrary to section 706 of the APA. This issue is also designated for review in PCI's appeal before the D.C. Circuit Court.

Faced with the uncertainties of an appeal, PCI was next forced to consider the realities of the situation. It is well known that appeals to the D.C. circuit can take years to complete. It is also well known that a stay is not easily granted or automatically issued. The threshold is high, apparently for good reason. The D.C. Circuit, no doubt, does not want everybody running up to it asking for a stay. Furthermore, the FCC immediately started an Enforcement Proceeding seeking an injunction to force PCI's immediate termination of operation in the Alaska District Court. However, more importantly, PCI was faced with a new dilemma...the "failure to broadcast for 12 consecutive months, section 316(g) automatic license expiration rule" enacted in the Telecommunications rewrite by Congress in 1996. This raised the prospect that if PCI obediently turned off the translators, as ordered in the May 2001 Termination Order, that 12 months later our appeal would become moot by the automatic expiration of all of PCI's translators licenses, with no provision for reinstatement by the FCC or by the court. The FCC has held that it is powerless to reinstate a license after automatic expiration, as it recently noted in the WVIS(FM) case in Puerto Rico.

PCI's examination of the Communications Act, Section 307 (c)(3) confirmed that PCI had authority for continued operation pending a decision, with licenses which "continued in effect" and, pursuant to section 405, appeals taken under section 402, come under the scope of section 405. It was abundantly clear this is the provision the Commission relied on when granting authority for continued operation pending judicial review to Contemporary Media and others, and PCI was entitled to the same right. The Commission has yet to enunciate any clear reasons for denying PCI equal treatment that it has accorded all other licensees in this regard since 1934, or state the statutory basis for the denial.

PCI believes none exist.


In PCI's "Motion for Leave to Offer Proof - State of Mind Defense" (Attached as Exhibit C), I have clearly laid out the reasons for PCI's belief it has continuing authority to operate based on both section 307 (c)(3) and also section 1.62, in the event the D.C. Circuit determines the May 2001 order not to be a "final" order, which is one issue which has been briefed before the Court of Appeals. I also clearly stated the "Catch 22" problem of being silent for more than 12 consecutive months and thereby forfeiting PCI's appeal rights. Clearly, PCI had to remain on the air in order to protect and preserve the underlying basis or corpus of PCI's appeal, which are PCI's translator licenses. Although the Commission effectively revoked PCI's licenses, the licenses continue "in effect" pending the finality of judicial review and a "decision" affirming or denying the FCC order. PCI could not allow its appeal to dissipate through the automatic termination of the licenses for failure to operate for more than 12 consecutive months. At this point, PCI's instincts have proven correct. Sixteen months has elapsed since the FCC termination order. The clock has started "ticking" with the forced termination of operation of PCI's seven translators by order of the Alaska District Court, which issued a preliminary injunction effective August 28, 2002 and which PCI obeyed by ceasing operation of its translators on that date and by continuing to leave its translators silent and out of operation. PCI now has less than 12 months in which to get a decision out of the D.C. Circuit. **PCI submits this is fundamentally unfair and contrary to the intent of Congress as enunciated by section 307(c)(3) of the Act. Congress clearly intended to permit a licensee to continue operating, with licenses which "continue in effect", pending the resolution of the appeal process.** This case certainly highlights the need for reform and to amend the Communications Act with regard to this problem. PCI intends to accomplish this with PCI's proposed "one sentence amendment" to the Communications Act in the next session of Congress with the help of Senator Ted Stevens, our senior Senator from Alaska, and Senator Frank Murkowski and Congressman Don Young. PCI is also seeking help from Congressman Billy Tauzin, Chairman of the House Committee on Energy and Commerce, which includes oversight of telecommunications and the Communications Act as rewritten in 1996.

Over the past 23 years of broadcast operation, PCI has maintained a clean record of operation in connection with all of PCI's stations. PCI has never been fined, except for the current forfeiture. PCI has never intentionally or knowingly violated FCC rules, with the lone exception of being forced to disobey the FCC's arbitrary and capricious May 2001 Termination Order. PCI submits that the May 2001 Order is clearly unlawful for all the reasons stated in PCI's Initial Brief to the D.C. Circuit, filed August 27, 2002. PCI is confident that the D.C. Circuit will, upon consideration of all the facts and circumstances surrounding this case, make a finding that PCI is justified in seeking the requested relief from the court.

PCI believes it will be vindicated in this proceeding and therefore, fully expects to be found to have the requisite character to continue to hold FCC licenses and be permitted to go back on the air.

I hereby declare under penalty of perjury, that the facts contained herein, except for those which official notice may be taken, are true and correct to the best of my personal knowledge and belief.

Date: September 11, 2002

A handwritten signature in cursive script, reading "David F. Becker", written in black ink over a horizontal line.

David F. Becker, President
Peninsula Communications Inc.